

REMARKS

Claims 1-2, 4-5, 8-9, 11-12, 15-21, 27-29, 31-36 are rejected in an Office Action dated June 16, 2008. Claims 1, 8, 27 and 32 have been amended. Claims 6-7, 13-14, 15-21, 31, 33-36 have been canceled. No new matter has been added. Claims 37-39 have been added to further clarify the present invention. Applicants respectfully request reconsideration of the present application in view of the following remarks.

Rejections under 35 USC §102

Claims 1-2, 4-5, 8-9, 11-12, 15-16, 18-19, 27-29 and 31-35 are rejected under 35 USC §102(b) as being anticipated by Bender et al. (US Patent No. 3,474,543). Applicants respectfully traverse this rejection.

One advantage of the present invention is directed to an improved cap assembly for venting and isolating materials in containers used in lyophilization processes. The inventive cap assembly optimizes containment of solute, prevents contamination, is very easy to use and is readily compatible with validated industrial freeze-drying processes.

Claims 1, 8, 27 and 32 have been amended to clarify the present invention, namely that a **removable** cap for isolation of contents in a stoppered container, allows vapor passage between the container and an external atmosphere. The cap comprises a venting media (6) which is oriented and **sealed at the top** of the cap. The venting media (6) is located external to the container opening and forms a barrier isolating the container from the external atmosphere.

Unlike the claimed invention, the apparatus of US Patent 3,474,543 to Bender et al. is not easy to use and does not provide the above stated benefits of the present invention. Bender et al. consists of an apparatus for freeze drying a plurality of bacterial cultures in a common receptacle. The culture containers have a mouth, which is closed off by a gas permeable, but bacterially impermeable plug. The

receptacle has an adapter means (31) for fluid-tight closing of the mouth of the receptacle.

A comparison between Bender's adapter means (31) and the present invention as depicted in the attached schematic, further clarifies the distinction between the two. Contrary to examiner's suggestion, a top portion of threaded cap (33) does not represent a venting media. Accordingly, a venting media oriented at the **top** of the cap and **external** to said container opening forming a **barrier** isolating the container from the external atmosphere is not taught or suggested by Bender.

Thus, Bender et al. do not teach all of the limitations in the amended claims. Section 2131 of the Manual of Patent Examiner's Procedure provides: "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. Of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053, (Fed. Cir. 1987). . . The identical invention must be shown in as complete detail as contained in the . . . claim. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as in the claim under review. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990)." To anticipate a claim, a single source or reference relied on as an anticipatory reference must contain all of the elements of the claim. *Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1379, 231 U.S.P.Q. 81, 90 (Fed. Cir. 1986), cert. denied, 480 U.S. 947 (1987); *Atlas Powder Co. v. E.I. du Pont de Nemours & Co.*, 750 F.2d 1569, 1574, 224 U.S.P.Q. 409, 411 (Fed. Cir. 1984). Moreover, the single source must disclose all elements recited in the allegedly anticipated claim "arranged as in the claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q. 2d 1913, 1920 (Fed. Cir. 1989); *Connell v. Sears Roebuck & Co.*, 722 F.2d 1542, 1458, 220 U.S.P.Q. 193, 198 (Fed. Cir. 1983). Thus, Bender et al. cannot be held to anticipate the present invention. Reconsideration and withdrawal of this rejection is respectfully requested.

Claims 15-21 are rejected under 35 USC §102(b) as being anticipated by Jones (US Patent No. 5,522,155). Applicants respectfully

traverse this rejection. However, in an earnest attempt to facilitate prosecution of the current application, these claims have been cancelled. Applicants reserve the right to prosecute these claims in a continuing application, thereby mooting this rejection.

Rejections under 35 USC §103

Claims 3, 10, 17, and 30 are rejected under 35 USC §103(a) as being unpatentable over Bender (US Patent 3,474,543). Applicants respectfully traverse this rejection. As discussed supra, independent claims 1, 8 and 27 are not anticipated by Bender et al. Therefore, further limitations of dependent claims 3, 10 and 30 do nothing to obviate the present claims in view of Bender. Reconsideration and withdrawal of this rejection is respectfully requested.

Claims 6-7, 13-14, 20-21, and 36 are rejected under 35 USC §103(a) as being unpatentable over Bender (US Patent 3,474,543) in view of Jones (US Patent 5,522,155). Applicants respectfully traverse this rejection. However, in an earnest attempt to facilitate prosecution of the current application, these claims have been cancelled. Applicants reserve the right to prosecute these claims in a continuing application, thereby mooting this rejection.

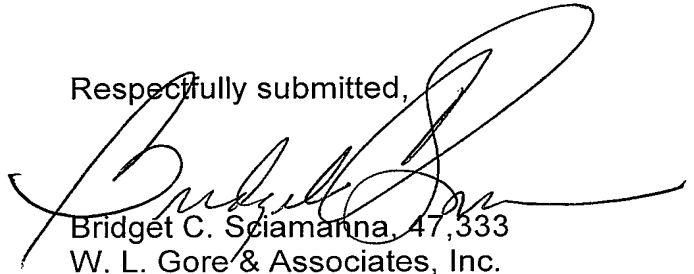
CONCLUSION

Applicants believe that a full and complete response has been made to the pending Office Action and respectfully submit that all of the stated objections and grounds for rejection have been overcome or rendered moot. Accordingly, Applicants respectfully submit that all pending claims are allowable and that the application is in condition for allowance.

Should the Examiner feel that there are any issues outstanding after consideration of this response, the Examiner is invited to contact the Applicants' undersigned representative at the number below to expedite prosecution.

Prompt and favorable consideration of this Reply is respectfully requested.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'Bridget C. Sciamanna', is written over the typed name and address.

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Fig 4 (Bender, US Patent No.3,474,543)

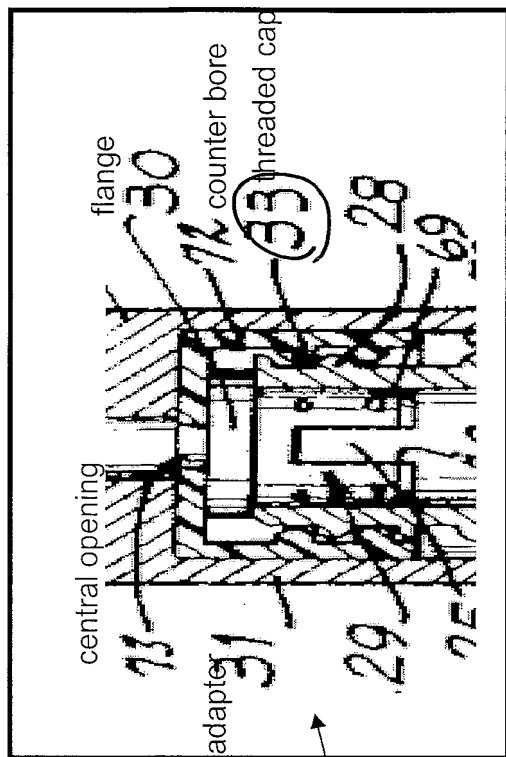
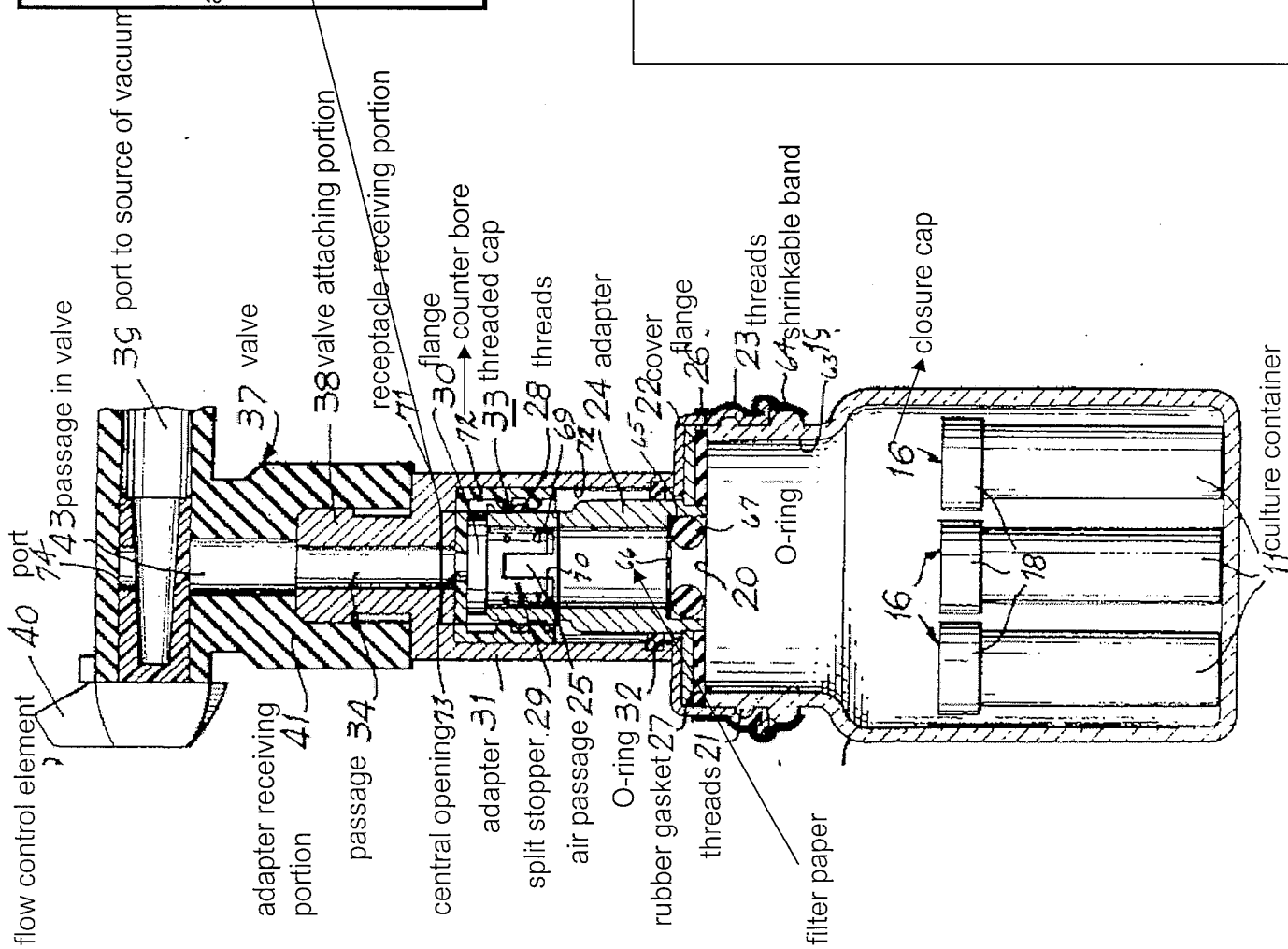


Fig 2 (Invention, Ser. No 10/693,371)

